

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 84 OF 2005.

Shri Umesh N. Palkar,
s/o late Nagesh Palkar,
H.No. 467/1, Chafad Wada,
Savoi, Verem, Ponda, Goa.

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Petitioner.

Versus

1. State of Goa,
Through Chief Secretary,
having its Office at Secretariat,
Panaji, Goa.

2. Director of Panchayats,
having its office at
Junta House, Panaji, Goa.

3. State Election Commissioner,
IInd Lift, 3rd Floor, Junta House,
Panaji, Goa.

4. The Collector of North Goa District,
Collectorate Building,
Panaji, Goa.

5. The Returning Officer,
Zilla Panchayat North Goa,
Collectorate Building,
Panaji, Goa.

6. Shri Sitaram Mukund Gaude,
H. No. 164, Wadi-wada,
Village Tivrem, Marcel, Goa.

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Respondents.

Shri J. Godinho, Advocate for the Petitioner.

Shri S.S. Kantak, Advocate General with Shri S.R. Rivonkar, Government
Advocate for the Respondents No.1, 2, 4 and 5.

Shri V.P. Thali, Advocate for the Respondent No.3.

Shri M.S. Sonak and Mr. D. Pangam, Advocates for the Respondent No.6.

**CORAM: S.S. PARKAR &
V.M.KANADE, JJ.**

DATE: 9th AUGUST, 2005.

ORAL ORDER: (PER PARKAR, J.)

The corrigendum Notification dated 10th February, 2005 issued for reserving Tivrem constituency for Schedule Tribe in Zilla Panchayat election is challenged by this Petition. Earlier the said constituency was meant for General Category and the petitioner wanted to contest the said elections from the General Category in that constituency.

2. The Notification was issued on 14th January, 2005 declaring elections for North Goa Zilla Panchayat to be held on 6th March, 2005. Thereafter by Notification dated 4.2.05 the date for election was revised to 13th March, 2005. The election was actually held on 13th March, 2005 and the results were declared on 15th March, 2005. The present petition was filed on 21st February, 2005 challenging the aforesaid Notification reserving the Constituency for Schedule Tribe candidates. Thus the petition was filed after the election process had commenced, but before the elections were held. This Election Petition was moved on 22nd February, 2005, but no interim relief was granted and in the meantime the elections were over.

After the elections, the petition was amended and prayer clause (bb) was added seeking declaration that the election of respondent No.2 was null and void and/or for quashing the respondent No.2's election from the Tivrem Constituency.

3. On behalf of the respondents, it was contended that now that the election is over and the results were declared as far back as 15th March, 2005 this petition does not survive in view of the bar under Article 243(O) of the Constitution. Reliance was also placed on the decision of the Supreme Court in the case of *Boddula Krishnaiah and another v. State Election Commissioner, A.P. And others* [(1996) 3 S.C.C. 416] in which it has been held that once an election process has been set in motion, the High Court would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held. In such a case the dispute is covered by an election dispute and remedy is thus available at law for redressal.

4. In this case the election having been already held and the results declared, the petitioner could have filed election petition to challenge the election on the ground that the Notification for the constituency for Schedule Tribe was wrongly issued. The main object of filing the present

petition was that the constituency ought not to have been reserved for Schedule Tribe at the last moment. Under Section 20(1)(d)(iv) of the Goa Panchayat Raj Act the election of the respondent could be challenged for non-compliance of the provisions of the Act or Rules made thereunder.

5. The learned Advocate for the petitioner however contended that the petition having been filed before the election, this petition can be decided at this stage. In support of his plea, he relied on an unreported judgment of the Division Bench of this Court in the case of Floriano Barreto v. The Director of Panchayats in W.P. No. 470/96 decided on 23rd December, 1996. The ratio of the said decision would not be applicable in the present case because in that case by interim relief the election was stayed, whereas in this case the interim relief was not granted and the election was already held. Reliance was also placed on the decision of the Supreme Court in the case of *Election Commission of India Through Secretary v. Ashok Kumar and others [(2000) 8 S.C.C. 216]* in which it was observed that if an election is to be called in question which may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completion of proceedings in elections. We do not think that the said observations assist the petitioner in this case so that the relief sought in this petition could be granted at this stage after the election was already over.

The reliance on the decision of the Supreme Court in the case of *State of Madhya Pradesh and others v. Devilal* (A.I.R. 1986 S.C. 434) is misplaced which was rendered by the Supreme Court before the introduction of amendment to Art.243(O) of the Constitution in the year 1993 which was not under consideration before the Supreme Court. In view of the clear bar of Art.243(O) this petition cannot be entertained at this stage. Even the reliance on the Judgment of this Court rendered by one of us (Kanade, J.) in the case of *Dilip s/o Devidas Ajmire & another v. Returning Officer & others* (2002 (3) Bom.C.R. 678) is of no assistance to the petitioner as it was clearly held in that case that in view of the fact that the election process was almost complete and ballot papers were printed, no interference in Writ Petition was called for, as alternative remedy of filing the election petition was available to the petitioner. In other words, the petition was not entertained even though the election was not over in that case.

For the aforesaid reasons, this petition cannot be entertained at this stage and therefore the same is rejected.

S. S. PARKAR, J.

V. M. KANADE, J.

sl.

